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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAIME MARTINEZ GOVEA; et al.,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-70498

Agency Nos. A095-300-761
A075-751-732

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Jaime Martinez Govea and Cecilia Pulido Chavez, natives and citizens of
Mexico, petition pro se for review of the decision of the Board of Immigration

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Appeals denying their motion to reissue the BIA's decision denying their motion to reconsider the denial of cancellation relief.

In their opening brief, petitioners did not raise any arguments related to the BIA's dispositive determination that petitioners failed to provide evidence to rebut the presumption that they received proper mail delivery of the BIA's previous decision, and thereby they waived any challenge to the BIA's order denying their motion to reissue. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

In their reply brief, petitioners argue for the first time that they did not receive a mailed copy of the BIA's order, and therefore, the BIA erred in denying their motion to reissue its prior decision. We may consider arguments raised for the first time in a reply brief, where, as here, the appellee raised the issue in its brief. *See Eberle v. City of Anaheim*, 901 F.2d 814, 818 (9th Cir. 1990).

We hold that the BIA did not abuse its discretion in refusing to reissue where the BIA stated explicitly that it considered petitioner's affidavit of non-receipt, and concluded that it failed to rebut the BIA's presumption of proper service. *See Singh v. Gonzales*, 494 F.3d 1170, 1172-73 (9th Cir. 2007).

PETITION FOR REVIEW DENIED.